IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO.2102 OF 1998

Shalomi Properties Pvt Ltd.)
a Private Limited Company)
registered under the Companies)
Act, 1956 and having its)
registered office at 9-A, Suvas)
68F, L.J.Marg, Bombay 400 006.) ...Plaintiff

Versus

Chaitanya Developers)
registered Partnership Firm)
registered under the Indian)
Partnership Act and having its)
Office at 414, Maker Bhavan No.3)
21, Sir V.Thakkersey Marg,)
Bombay 400 020.) ...Defendant

Ms A.B.Kapadia i/by Daphtary Ferreira & Divan for the Plaintiffs.

CORAM : ABHAY S.OKA, J.
DATED : JULY 25, 2007.

ORAL JUDGMENT:

1. The suit is kept on board under the caption of "Undefended Suits for Exparte Decree". The learned counsel for the Plaintiffs has tendered on record an affidavit in lieu of evidence of one Shailaja Merchant, the Director of the Plaintiffs. The original documents on which claim of the Plaintiff is based are annexed to the affidavit.

2. According to the case of the Plaintiffs, there were negotiations between the Plaintiffs and late Shri

Vallabh Thakkar, a partner of the Defendants as regards sale of a flat premises on second floor of a building proposed to be constructed by the Defendants. According to the case of the Plaintiffs, they had agreed to purchase the flat No.4 admeasuring 1350 sq feet (of built up area) for consideration of Rs.71 lakhs and the Plaintiff had paid a sum of Rs.55 lakhs to the Defendants.

3. The claim of the Plaintiff has been duly proved by the affidavit of the said Shailaja Merchant. She has deposed regarding the letter of allotment of the flat issued by the Defendants to the Plaintiff. It is stated in the affidavit that there is a receipt issued by the Defendants on 07th February, 1997 acknowledging payment of a sum of Rs.40 lakhs by the Plaintiffs. The said receipt has been produced and proved. A reliance is also placed on an acknowledgment given by the Defendants as regards a further payment made by the Plaintiffs in the sum of Rs.5 lakhs. The said acknowledgment has been proved. For proving the balance payment of a sum of Rs.10 lakhs, bank account statements of the Plaintiff have been produced. Thus, the Plaintiff has proved the payment of a sum of Rs.55,00,000/- to the Defendants. The claim in the suit is of recovery of the said amount of Rs.55 lakhs with interest at the rate of 9 per cent

per annum. It is stated that the Defendant did not execute an Agreement of Sale as per the letter of allotment. The possession of the flat was not handed over to the Plaintiff.

4. As the claim of the Plaintiff is duly proved by the affidavit and aforesaid documents, the Plaintiff are entitled to a decree. However, interest will have to be fixed at 6 per cent per annum from the date of the suit till the payment or realisation. Hence, the suit is decreed in terms of prayer clauses (a), (b) and (h) with a modification that the further interest payable will be at the rate of 6 per cent per annum on the sum of Rs.55,00,000/- from the date of the suit till the payment or realisation. The Plaintiff will be entitled to refund of court fees, if any, as per the rules. Certified copy is expedited.

JUDGE